

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6632
PETITION OF JAMES MCWHORTER AND YASMIN ABADIAN**

OPINION OF THE BOARD

(Hearing Date: September 25, 2019)
(Effective Date of Opinion: October 2, 2019)

Case No. A-6632 is an application by James McWhorter and Yasmin Abadian (the "Petitioners") for two variances from the requirements of Section 59-4.4.7.B.2 of the Zoning Ordinance, needed to construct a new garage/carport. First, the Petitioners seek a variance from the requirement in Section 59-4.4.7.B.2.a of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building. In addition, the Petitioners seek a variance to locate the proposed structure within 0.50 feet of the left lot line, requiring a variance of 11.50 feet. Section 59-4.4.7.B.2 of the Zoning Ordinance requires that accessory structures be set back twelve (12) feet from the side lot line.

The Board of Appeals held a hearing on the application on September 25, 2019. Petitioner James McWhorter appeared at the hearing in support of the requested variances, represented by Jody S. Kline, Esquire. Petitioners' architect was also in attendance.

Decision of the Board: Variances **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 28, Block 2, Timberwood of Potomac Subdivision, located at 9436 Holbrook Lane, Potomac, MD, 20854, in the R-200 Zone. The subject property was platted in 1971, is 16,922 square feet in size, irregularly shaped, and much longer than it is wide. See Exhibits 3 and 4(c). The Zoning Vicinity Map and Subdivision Plat show that the property is located on the northeast side of a cul-de-sac, and is bordered to the north and east by undeveloped property which is owned by the Maryland-National Capital Park and Planning Commission. See Exhibits 7(a) and (b).

2. The Applicants' Statement ("Statement") states that the Petitioners are seeking to "remodel/redesign their garage and add a carport," explaining that "[t]he reconstruction of

the proposed structure is essentially in the same location as the existing garage, albeit slightly larger, since the existing garage was originally built beside the residence in the left side of the lot." See Exhibit 3. It states that the existing garage is undersized, and that the narrowness of the existing garage has caused the Petitioners to dent their cars. It indicates that in addition to remodeling the existing garage, the Petitioners are seeking to "add an adjacent open carport to accommodate under roof parking for a third vehicle."

3. The Petitioners' variance application indicates that their property is narrow and has other extraordinary conditions, stating that "the property is relatively narrow at the building line; the shape of the lot does not allow for a garage to be located in the rear yard." See Exhibit 1. The Statement indicates that with a width of approximately 100 feet, the subject property "does not have adequate space for a house with an average width and an associated enclosed and/or covered parking facilities." The Statement describes improvements to the rear yard, including a patio, pond/waterfall, pergola and firepit, and notes that there is a 15-foot wide storm drain easement on the southern part of the property, concluding that "[f]or all these reasons, it would not be possible, nor advisable, to site a garage/carport behind the rear plane of the residence." See Exhibit 3. Perhaps more importantly, the Statement goes on to note that "the adjacent parkland property carries heavy water volume for Rock Run Stream which periodically overflows onto the subject property during heavy rains" such that the subject property's rear yard "will continue to be subject to occasional flooding and property damage" and "would not be an advisable site for any building." The Statement asserts that "environmental features, to wit, the adjacent Rock Run stream valley park owned by Maryland-National Capital Park and Planning Commission, dictate the shape of Lot 28 and determine where the desired accessory structure can be located." See Exhibit 3.

4. The Statement asserts that the proposed location of this accessory structure forward of the rear building line "continues a development pattern that is common in the existing Holbrook Lane neighborhood," as evidenced by the Zoning Vicinity Map. That map shows that six of the seven homes around this cul-de-sac have accessory structures located forward of the rear building line. See Exhibits 3 and 7(a).

5. The Statement states that the proposal requests "only a modest expansion of the garage portion of the existing structure." It further notes that "[t]he desired carport has been designed to be as efficient as possible so as to minimize the amount of variance requested by the Applicants," and "is necessary to provide sufficient parking to guests," including Petitioner's mother-in-law. See Exhibit 3.

6. With respect to impact on neighboring properties, the Statement at Exhibit 3 concludes that the proposed construction "would not have any adverse effects on any abutting or adjoining properties" because:

1. The carport will not be adjacent to any other occupied residential lot. It will instead abut the substantial multi-acre Rock Run Stream Park.

2. The carport will be located at least 260 feet from the next closest lot to the west, a lot which has its garage in its "front yard."

3. The carport will be "open" and will have only a roof with poles holding up the roof. Therefore, the building will have little mass since it will be a "see through" structure.

7. At the hearing, counsel for the Petitioners noted that this is an unusually-shaped, elongated lot, with a width at the building line that makes it difficult to locate a garage in the rear yard. He explained that the property currently contains a 20-foot by 20-foot garage, and a shed whose rear corner encroaches on the neighboring park property. He stated that the Petitioners intend to replace the garage with a slightly larger garage by bringing the front wall forward two feet and extending each side out by one foot. Counsel stated that the existing shed will be demolished, and that the proposed carport will be located entirely on the Petitioners' property.

In addition, counsel stated that the proposed construction is consistent with the development pattern on this street, indicating that the Zoning Vicinity Map shows that almost every property on this cul-de-sac has an accessory building located forward of the rear building line, either to the front or to the side, and that the next cul-de-sac over shows the same pattern. See Exhibit 7(a). Counsel noted that adding a carport to the garage doesn't really add a new structure, since there has been a concrete pad and shed in this area of the property since the Petitioners purchased it. He stressed that the proposed carport will not be visible to any other property, and that it will pose less mass and intrusion than the existing shed.

Finally, counsel noted that the property drops off towards the stream valley, and that there is a storm drain easement across the southern portion of the property, further limiting opportunities for construction behind the rear building line. Counsel noted, following the testimony by Petitioner McWhorter that the rear yard of the subject property sometimes receives excessive water flow from the abutting stream valley park, that this water would place stress on the foundation of any accessory structure located behind the rear building line.

8. Petitioner James McWhorter testified that the existing garage is too small to open both the driver's side and passenger side car doors inside of the garage without hitting the second vehicle parked there, explaining that when he has a passenger, he has to back out of the garage before letting that person into the car, and conversely on parking, has to let that person out before pulling into the garage. With respect to the requested carport, the Petitioner testified that his mother-in-law, who is in her 80's, spends weeks and months at their house, and that due to her age and condition, he would let her use the garage when she is present and he would park under the carport.

In response to a Board question asking if the carport could be located on the opposite side of the garage, closer to the house, the Petitioner testified that that would be difficult but might be possible, but that if the carport were so located, it would be visible to

the neighbors. In response to a Board question asking about the extent to which the property drops off, the Petitioner estimated that it drops approximately ten feet from the front to the rear of the house, and then another five feet to the property line. He then testified that during recent rains, the rear of his property has been inundated with water from the stream valley park which is undermining their patio and has washed out their backyard. He testified that they have asked the County to remediate this situation, to no avail. He testified that they have installed a French drain and an 80-foot rock bed to try to capture the excess water.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property is exceptional not only due to its narrowness and irregular shape, and the fact that the southern portion of the property is encumbered by a storm drain easement, but also because the subject property abuts a stream valley park which "periodically overflows onto the subject property during heavy rains" such that the subject property's rear yard "will continue to be subject to occasional flooding and property damage." The Board finds that these conditions, taken together, serve to constrain the Petitioners' ability to locate the proposed construction in compliance with the development standards of the Zoning Ordinance, and constitute unusual or extraordinary circumstances peculiar to the subject property.

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the Statement, the Zoning Vicinity Map, and the representations of counsel, that the proposed location of this accessory structure is not only consistent with the general location of the existing garage and shed, but also is consistent with the established development pattern around this cul-de-sac, in which six of the seven homes on the cul-de-sac have accessory structures located forward of the rear building line. See Exhibits 3 and 7(a). The Zoning Vicinity Map also shows that the neighboring cul-de-sac has a similar development pattern. Thus the Board finds that the grant of the requested variances would substantially conform with the established historic or traditional development pattern of this street or neighborhood.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The subject property was subdivided in 1971, prior to Petitioners ownership of the property. There is no evidence in the record to suggest that the Petitioners are responsible for their property's narrow and irregular shape, for the location of the storm drain easement across its southern portion, or for its proximity to a stream valley park, nor is there evidence to show that they are responsible for the development pattern of the other properties around their cul-de-sac and the neighboring cul-de-sac. Thus the Board finds that the special circumstances or conditions pertaining to this property are not the result of actions by the Petitioners.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the Statement and the Zoning Vicinity Map, that the subject property and neighboring homes on this cul-de-sac have garages or other accessory structures located forward of the rear building line, and that the requested variance from the requirement that accessory structures be located behind the rear building line is the minimum needed to allow for replacement of the existing structure in a manner consistent with the historic development of this property and the development pattern of the street or neighborhood, and thus to overcome the practical difficulty that would be imposed by full compliance with the Zoning Ordinance. With respect to the requested side lot line variance, the Board finds that the requested variance is the minimum needed to locate the proposed construction in the same general location as the existing garage and shed, and to overcome the unusual narrowness of the subject property and the constraints imposed on building to the rear of the subject property by the storm drain easement and abutting stream valley park (with its attendant flooding), and is therefore the minimum necessary to overcome the practical difficulties that would otherwise be imposed by compliance with the restrictions of the Zoning Ordinance.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the construction of the proposed structure continues the residential use of the home, consistent with the recommendations of the Potomac Subregion Master Plan (2002).

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

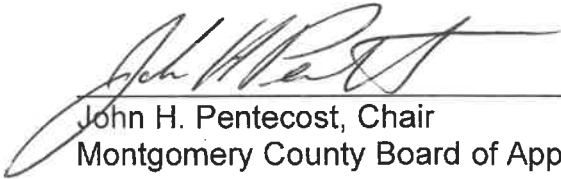
The Board finds, per the Statement, that the proposed construction "would not have any adverse effects on any abutting or adjoining properties" because it will not be adjacent to any other occupied residential lot, but rather will abut the "substantial multi-acre Rock Run Stream Park," and because it will be at least 260 feet from the next closest lot to the west. The Board further notes that the proposed construction is in the same general location as an existing garage and shed, which will be demolished. Finally, the Board finds, per the testimony of the Petitioner, that locating the carport in the location proposed will minimize its visibility from neighboring properties. Thus the Board finds that the granting of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances to allow the proposed garage/carport to be located in front of the rear building line, and to be set back 0.50 feet from the left side lot line, are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a) and 5.

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, Vice Chair, seconded by Bruce Goldensohn, with John H. Pentecost, Chair, Katherine Freeman, and Jon W. Cook in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 2nd day of October, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.